effort to support the decision on a ground which is different from the one on which the Circuit Court of Appeals based its decision, and which is contrary to the concurrent findings below and is overwhelmingly disproved by the testimony of every officer and person on board the vessel. Indeed, counsel for respondent formally conceded in the District Court (R., pp. 267-268) that before the forcible, mutinous seizure in New York, any possession was merely "constructive" (R., pp. 267-268). The District Court recites that concession in its opinion (R., pp. 267-268).

Point III at page 17 of respondent's brief is clearly in conflict with the several decisions of this Court mentioned in the Petition if its broad language is intended to mean that an ex parte "decree of confiscation" entered in peace time in a foreign country is legally effective, without institution of judicial condemnation proceedings, to deprive an alien resident of this country of personal property which is in his possession in this country, the alien having been charged with no offense against any law, and no equitable reason for the penalty or forfeiture having been shown.

The contentions of counsel for respondent in their brief are, we respectfully submit, based on a misapprehension with respect to principles of law which are well settled by decisions of this Court, and which are summarized as follows in the most recent authoritative American treatise on the subject (Professor Charles G. Fenwick's "International Law", Second revised edition, 1934, D. Appleton-Century Co., New York):

"In admitting aliens within its territory,

whether as transient visitors or as permanent residents, states assume an obligation to give them a degree of protection which, as a minimum, is represented by the protection which they give to their own citizens. * * * If an injury is done to them, the state is under obligation to permit them to have access to its courts for redress on the same footing as if they were citizens" (at p. 197).

"It is definitely accepted that the exercise of a state's jurisdiction over its citizens is strictly limited to territorial boundaries. Any attempt to extend the control of the state beyond those limits would be an encroachment upon the independence of another state and a serious infraction of international law. But this territorial restriction upon jurisdiction still leaves the state free to assert rights over the citizen which may be made effective if at any subsequent time the citizen should return within the boundaries of the state". (at p. 188).

"This fiction of the "exterritoriality' of vessels, while it finds expression in numerous decisions of British and American courts, has been rejected by most modern writers on the ground that, while it is a convenient explanation of the greater part of the relations which the vessel and persons on board bear to the state of the vessel's flag, it is inconsistent with other relations affecting the vessel both on the high seas and in foreign ports. (The history and inadmissible character of the theory are well set forth in Hall, International Law, §75. In the decision of *Cunard Steamship Co.* v. *Mellon,* 262 U. S. 100 (1923), the court dismissed the suggestion that a merchant ship is a part of the territory of the country whose flag it flies as being 'a figure of speech,—a metaphor' " (at p. 218).

"Merchant vessels in foreign ports are not exempt from civil suit *in rem* brought by a citizen of the foreign state, nor are the officers or crew of the vessel exempt from civil suit *in personam* or from criminal prosecution by the foreign government for acts in contravention of the laws of the state" (at p. 222).

Respectfully submitted,

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